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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,358	11/26/2001	Jules Zecchino	2870/566	2755
7590	12/29/2005			EXAMINER
KAREN A. LOWNEY, ESQ. ESTEE LAUDER COMPANIES 125 PINELAWN ROAD MELVILLE, NY 11747			FUBARA, BLESSING M	
			ART UNIT	PAPER NUMBER
			1618	
DATE MAILED: 12/29/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No.	Applicant(s)	
	09/995,358	ZECCHINO ET AL.	

Examiner	Art Unit	
Blessing M. Fubara	1618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 28 February 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))
6. The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. Other (including any explanation in support of the above items):

See attached.

NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR
41.37(c)

The brief does not contain the items of the brief required by 37 CFR 41.37(c)(1) under the appropriate headings and/or in the order indicated.

A review of the application reveals that the following sections are missing from the Appeal Brief filed:

- (1) "Summary of the claimed subject matter" as set forth in 37 CFR § 41.37(c)(1)(v);
- (2) "Grounds of rejection to be reviewed on appeal" as set forth in 37 CFR § 41.37(c)(1)(vi) (replaces "Issues for Review" and "Grouping of Claims");
- (3) "Evidence appendix", as set forth in 37 CFR § 41.37(c)(1)(ix); and
- (4) "Related proceedings appendix" as set forth in 37 CFR § 41.37(c)(1)(x).

Accordingly, the brief filed 02/28/2004 does not comply with the new rules under 37 CFR § 41.37(c). A substitute brief that is in compliance with 37 CFR § 41.37(c) is required.

For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcomp/bpai/fr2004/moreinfo.html>

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 272-0594. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

(BF)

Blessing Fubara
Patent Examiner
Tech. Center 1600

THURMAN K PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

DEC 20 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JULES ZECCHINO,
MICHELLE MATATHIA,
E. ALTHEA KNIGHT and
JAMES T. HARRISON

Application No. 09/995,358

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on October 5, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the file indicates that on February 28, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR §1.192(c). However, the rules under

37 CFR §1.192 (c) were abolished on September 13, 2004, and replaced by 37 CFR § 41.37(c) which states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

A review of the application reveals that the following sections are missing from the Appeal Brief:

- (1) "Summary of the claimed subject matter" as set forth in 37 CFR § 41.37(c)(1)(v);
- (2) "Grounds of rejection to be reviewed on appeal" as set forth in 37 CFR § 41.37(c)(1)(vi) (replaces "Issues for Review" and "Grouping of Claims");
- (3) "Evidence appendix, as set forth in 37 CFR § 41.37(c)(1)(ix); and
- (4) "Related proceedings appendix" as set forth in 37 CFR § 41.37 (c)(1)(x).

A substitute brief that is in compliance with 37 CFR § 41.37(c) is required. For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>

Accordingly, it is

ORDERED that the application is returned to the examiner to:

- hold the Appeal Brief filed on February 28, 2005 defective;

- have the appellants submit a substitute Appeal Brief in compliance with the new rules set forth in 37 CFR § 41.37 (c) ;
- submit a revised Examiner's Answer in response to the substitute Appeal Brief for compliance with the new rules effective September 13, 2004, and;
- for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



Craig R. Feinberg
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